

*United States v. Calero-Drouet*, No. 04-50603

**DEC 30 2005**

REINHARDT, Circuit Judge, concurring in part and dissenting in part:

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

Although I agree that financial gain is a core element of 8 U.S.C. § 1324(a)(2)(B)(ii), I cannot agree that the government satisfied its burden to produce independent evidence to corroborate Counts 1 and 2. A single incident of transporting an alien for financial gain some three years after the other alleged offenses is not alone sufficient to establish independent corroboration for the earlier incidents, especially when the later occurrences are of a substantively different nature. I also disagree that we may hold against the defendant his failure to volunteer an alternative explanation for his conduct. It is his constitutional privilege not to do so, and no adverse inferences are proper. Accordingly, I would reverse the conviction as to Counts 1 and 2.